

**Lin v. MetLife**

**07 civ. 3218**

**EXHIBIT E**

ORIGINAL

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2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

3

-----X

JEAN LIN,

4

5

Plaintiff,

6

-against-

07-CV-3218

7

(Judge Holwell)

8

METROPOLITAN LIFE INSURANCE COMPANY,

9

10

Defendant.

-----X

11

12

DATE: February 22, 2008

13

TIME: 10:15 a.m.

14

15

DEPOSITION of the Defendant, by

16

DENNIS W. WESTMAN, taken by the

17

Plaintiff, pursuant to a Court Order,

18

held at the offices of Trief & Olk, 150

19

East 58th Street, New York, NY 10155

20

before Chanie Berman, a Shorthand

21

Reporter and Notary Public of the State

22

of New York.

23

24

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WESTMAN

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Q What do you mean by a reference

3

tool, something you have to follow or you can

4

consider or you can reject?

5

A When you get the requirements on

6

an exam you will look at this to see if the

7

blood pressures fall within the guidelines.

8

Q Do you have to follow this or is

9

it just a guide?

10

A It's just a guide.

11

Q So you are free to accept it or

12

reject it; is that correct?

13

A Yes.

14

Q With respect to underwriting, even

15

if there are written criteria and this says

16

criteria, do you have a rule?

17

A Yes.

18

MS. SHERER: Objection to the

19

form.

20

MR. TRIEF: What is the objection?

21

MS. SHERER: I feel you are

22

badgering the witness.

23

MR. TRIEF: What is the objection

24

to the form? The witness is saying uh

25

huh and --

WESTMAN

14

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2

(At this time an off-the-record  
discussion took place.)

3

4

MR. TRIEF: Can I have the  
question read back, please?

5

6

(At this point, requested portion of  
testimony was read back.)

7

8

Q Do you see Exhibit 1 has the word  
criteria on it?

9

10

A Yes.

11

Q If an applicant does not meet  
criteria that is set forth on Exhibit 1, are  
you free still to write select preferred if  
you want to?

12

13

14

15

A Yes, we are.

16

Q And so, would you agree that  
underwriting is subjective to the  
underwriter?

17

18

19

A Yes, sir.

20

Q There is underwriting when the  
policy is initially applied for; correct?

21

22

A Yes.

23

24

25

Q If someone died within the  
contestability period, is there also an  
underwriting component to that?

WESTMAN

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asking questions that have been asked repeatedly.

Q Have you ever been involved in evaluating underwriting during the contestability period, upon the death of a policyholder?

A Yes.

Q Were you asked in this case to consult?

A Not on the death claim.

Q You are here today?

A I am here today.

Q At my request?

A Yes, at your request.

Q Correct, but I am asking when the decision was made to reject the claim, were you consulted before that decision?

A No.

Q No one asked you what you would have done?

A No. These go to the medical department, medical director.

Q Is it the policy and procedure of MetLife not to talk to the original

1

WESTMAN

19

2

department. The underwriters don't get

3

talked to about the death claims.

4

Q Okay. Did you underwrite the Bang

5

Lin --

6

A Yes, I did, sir.

7

Q -- policy?

8

A (No response).

9

Q Were you the sole underwriter who

10

wrote it?

11

A Yes, sir.

12

Q Were you familiar with the

13

criteria which is listed in both Exhibit 1

14

and Exhibit 2 of today's deposition? You

15

take your time, as long as you need, to look

16

at them.

17

A Yes, sir.

18

Q Did Mr. Lin meet the criteria

19

which is listed on Exhibit 1 or Exhibit 2?

20

A Yes.

21

Q Did Mr. Lin have any elevated

22

bilirubins?

23

A Yes, he did, sir.

24

Q Is that one of the criteria which

25

are listed in Exhibit 1 and Exhibit 2 of

1

WESTMAN

22

2

A No.

3

Q And he had elevated bilirubin;

4

correct?

5

A Correct, yes.

6

Q And did you make a subjective

7

judgment to issue the policy at a rate which

8

was outside of the criteria listed in Exhibit

9

1 and Exhibit 2?

10

A Yes, I did sir.

11

MS. SHERER: Objection to the

12

form.

13

Q Does he have elevated cholesterol?

14

A No, sir.

15

Q Did he have elevated

16

triglycerides?

17

A Yes, sir.

18

Q What does that mean?

19

A It's an indication of possible

20

cardiac.

21

Q Does the MetLife criteria indicate

22

that he should not have received the rate if

23

he had elevated triglycerides?

24

A They weren't elevated enough that

25

I would have had a concern.

1

WESTMAN

41

2

Q That wasn't the question. What

3

rates were available to, that is what MetLife

4

life insurance rates were available to Mr.

5

Lin, at that time?

6

MS. SHERER: Objection to the

7

form.

8

A They would all be substandard.

9

Q Substandard or standard?

10

A They would all be what we consider

11

a substandard class. The best class

12

available would be select preferred and then

13

you would consider the rest to be a

14

substandard class.

15

Q Preferred is substandard also?

16

A Yes.

17

Q Go through the rates that were

18

available.

19

A Select, Select Preferred,

20

Preferred, Standard, Table C, Table D.

21

Q What is the difference in rates

22

between select preferred and preferred?

23

A The premiums.

24

Q What difference in premium, 50%,

25

10%, 100%?

1

WESTMAN

42

2

A It would depend on the face amount  
3 and stuff. You are looking at dollars.

4

Q Well, let's assume there was a  
5 premium of \$500 for Select Preferred. How  
6 much more would Preferred be?

7

A Preferred would probably be 600.

8

Q How much would standard be?

9

A Probably could drop to 7, 800.

10

Q That would be, the rate change  
11 charge would be the subjective view of the  
12 medical director, correct, at that point?

13

A No, you would key into the system  
14 what we call debits and it would assess the  
15 premiums versus as you look on here there is  
16 debits. 75150. When you key into the  
17 system, the system gives out the -- that is  
18 an actuarial.

19

Q Wouldn't the medical director have  
20 discretion to put the applicant in whatever  
21 category he wanted to?

22

A Yes.

23

Q He could choose either Standard,  
24 Preferred or Select Preferred. It was up to  
25 his discretion?

1

WESTMAN

43

2

A Yes, sir.

3

Q Would it have been significant to  
4 you if the doctor who was treating Mr. Lin  
5 for hepatitis B with interferon in 1999 said  
6 he was cured?

7

A Hepatitis B is not an impairment  
8 that is going to be cured. You are going to  
9 be followed with that. You are going to  
10 change your eating habits and lifestyle.

11

Q Would it have been significant to  
12 you if the doctor who was treating Mr. Lin  
13 and treated Mr. Lin with interferon in '99  
14 said he was cured?

15

MS. SHERER: Objection to the  
16 form. Asked and answered.

17

A When you say cured, it's not  
18 cured. It's remission.

19

Q Would it have been significant to  
20 you if he said it was cured?

21

A I would have assumed that it was  
22 in remission.

23

Q Then you would have referred it to  
24 the medical director?

25

A It would have gone to the medical

1

WESTMAN

44

2

department with a recommendation with a

3

better scenario than some of the scenarios in

4

the reference table you gave me.

5

Q Exhibit 3?

6

A Yes.

7

Q So you would have recommended

8

something better than is shown in Exhibit 3?

9

A Yes.

10

Q People who sell the policies with

11

MetLife, what are they called? Are they

12

called salesmen?

13

A Agents.

14

Q Are agents the equivalent of

15

salesmen when it comes to life insurance

16

policies?

17

A Yes.

18

Q And it's their object to sell as

19

much as they can; correct?

20

MS. SHERER: Objection to the

21

form.

22

A They assess the need and purposes

23

of the insurance.

24

Q They are paid on how much

25

insurance they sell; correct?

1

WESTMAN

45

2

A Yes, sir.

3

Q And they are paid a percentage of

4

the premium; correct?

5

A Yes.

6

Q Are you a salaried employee?

7

A Yes, sir.

8

Q So there is a difference in how

9

you are compensated?

10

A Yes, sir.

11

Q Do different salesmen, depending

12

upon volume, have different relationships

13

with underwriting?

14

A Yes, sir.

15

Q Can you explain the differences?

16

A Agents that have been with the  
company and have produced a certain volume of

17

18

business are with what we call the Elite and

19

Contier Service Underwriting.

20

Q What does that mean, contier?

21

A It's a level that the agents have

22

of business that they have sold to be with

23

this unit.

24

Q What is the effect of being with

25

the Elite and Contier?

1

WESTMAN

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2

is issued so the applicant or client gets a  
3 copy of it.

4

5

6

Q Is Exhibit 4 and 5 together the  
application or is it only one of the  
exhibits, in your opinion?

7

8

9

10

A In my opinion, you get the  
application to review in the beginning and  
this, yes, this becomes part of the  
application when received.

11

MS. SHERER: Can you give --

12

13

14

A Five is the application. Number  
four becomes part of the application when  
it's completed by the client.

15

16

Q So when it's completed by the  
client both 4 and 5 are the application?

17

A Are the application.

18

19

20

21

Q Okay. Got it. Thank you. When  
someone has been successfully treated for  
hepatitis, do they have a normal life  
expectancy?

22

23

24

25

A I would say the impairment, as  
long as they follow their physician's  
guidance, they are going to have a normal  
life expectancy, to some point.

1

WESTMAN

51

2

Q Someone having a normal life

3

expectancy is important in underwriting?

4

A Yes.

5

Q When you are underwriting you are

6

really considering whether someone has a

7

normal life expectancy or not; correct?

8

A Yes.

9

Q The treatments for hepatitis B has

10

changed over the years; has it not?

11

MS. SHERER: Objection to the

12

form.

13

Q If you know?

14

A I would assume yes.

15

Q In 1999 you treated hepatitis B

16

with interferon; correct?

17

A Yes.

18

Q In the mid 2000s, you could take a

19

pill; correct?

20

MS. SHERER: Objection to the

21

form.

22

MR. TRIEF: If you know.

23

MS. SHERER: Lack of foundation.

24

Q Are you aware of that?

25

A I will assume there is treatment,